

ORDINANCE NO. 635

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, AMENDING CHAPTER 11.96 "NOISE CONTROL" OF THE CATHEDRAL CITY MUNICIPAL CODE TO ADOPT REGULATIONS FOR THE CONTROL OF NOISE WITHIN THE CITY AND STANDARDS FOR DETERMINING THE EXISTENCE OF A NOISE VIOLATION

WHEREAS, excessive noise is a serious hazard to the public health and welfare and the exposure to certain levels of noise can result in physiological, psychological, and economic damage; and

WHEREAS, the City Council of the City of Cathedral City desires to adopt provisions and prohibitions in order to control unnecessary, excessive, and annoying noise and vibration within the City of Cathedral City (the "City") to the extent that such regulation is not otherwise preempted by California Penal Code Section 415; and

WHEREAS, the provisions and prohibitions for the control of noise adopted by this Ordinance are enacted in furtherance and for the purpose of securing and promoting the public health, comfort, convenience, safety, general welfare and peace and quiet of the City and its inhabitants.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. REPEALED SECTION 11.08.040

Section 11.08.040 of the Cathedral City Municipal Code ("Code") shall be repealed in its entirety.

SECTION 2. REVISED CHAPTER 11.96, "NOISE CONTROL"

Chapter 11.96 "Noise Control" of the City of Cathedral City Municipal Code is hereby amended to read as follows:

Chapter 11.96 NOISE CONTROL

11.96.010 PURPOSE AND INTENT

(a) It is the purpose of these regulations to implement the goals and objectives of the noise element of the City's general plan to establish community-wide noise standards and to serve as a reference for locating other City regulations relating to noise in the community. It is further the purpose of these regulations to recognize that the existence of excessive noise within the City is a condition which is detrimental to the health, safety, welfare and quality of life of the citizens and shall be regulated in the public interest.

(b) In furtherance of the foregoing purpose, it is found and declared as follows:

1. The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises that are prolonged, unusual, annoying, disturbing and unnatural in their time, place and use are a detriment to public health, comfort, convenience, safety, general welfare and the peace and quiet of the City and its inhabitants; and
2. The public interest necessity for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, general welfare and property and the peace and quiet of the City and its inhabitants.

11.96.020 DEFINITIONS.

As used in this chapter, the following terms have the meanings given:

~~"Administrative Appeals Officer" means the individual who conducts administrative appeal hearings and renders decisions pursuant to the administrative appeal procedures set forth in Title 13 of this Code.~~

"Construction equipment" means tools, machinery or equipment used in connection with construction operations, including all types of "special construction" equipment as defined in the pertinent sections of California Vehicle Code when used in the construction process on any construction site, home improvement site or property maintenance site, regardless of whether such site be located on highway or off highway.

"Enforcement Officer" means a City code enforcement officer or peace officer authorized to enforce the provisions and prohibitions of this chapter pursuant to section 11.96.080.

"Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the investigating Enforcement Officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the vibration from the rhythmic bass component of the music is sufficient to constitute a plainly audible sound.

"Public right-of-way" means any street, avenue, boulevard, highway, sidewalk, alley or similar place, owned or controlled by a government entity.

"Public space" means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreation areas.

"Responsible Person" means (1) any person who owns, leases or is lawfully in charge of the property or motor vehicle where the noise violation takes place or (2) any person who owns or controls the source of the noise or violation. If the Responsible Person is a minor, then the parent or guardian who has custody of the child at the time of the violation shall be the Responsible Person who is liable under this chapter.

11.96.030 PROHIBITED ACTS.

A. It shall be unlawful for any person to engage in the following activities:

1. Sounding any horn or signal device on any automobile, motorcycle, bus or other motor vehicle in any other manner or circumstances or for any other purpose than required or permitted by the Vehicle Code or other California laws.

2. Racing the engine of any motor vehicle while the vehicle is not in motion, except when necessary to do so in the course of repairing, adjusting or testing the same.

3. Operating or permitting the use of any motor vehicle on any public right-of-way or public place or on private property within a residential zone for which the exhaust muffler, intake muffler or any other noise abatement device has been modified or changed in a manner such that the noise emitted by the motor vehicle is increased above that emitted by the vehicle as originally manufactured.

4. Operating or permitting the use or operation of personal or commercial music or sound amplification or production equipment that is:

- a. Plainly audible across property boundaries;
- b. Plainly audible through partitions common to two residences within a building;
- c. Plainly audible at a distance of 50 feet in any direction from the source of music or sound between the hours of 8:00 a.m. and 10:00 p.m.; or**
- d. Plainly audible at a distance of 25 feet in any direction from the source of music or sound between the hours of 10:00 p.m. and 8:00 a.m.**

5. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or any motor vehicle burglar alarm, except for emergency purposes or for testing, unless such alarm is terminated within fifteen minutes of activation.

6. Creating excessive noise adjacent to any school, church, court or library while the same is in use, or adjacent to any hospital or care facility, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating the presence of a school, institution of learning, church, court or hospital.

7. Making or knowingly and unreasonably permitting to be made any unreasonably loud, unnecessary or unusual noise that disturbs the comfort, repose, health, peace and quiet or which causes discomfort or annoyance to any reasonable person of normal sensitivity. The characteristics and conditions that may be considered in determining whether this section has been violated, include, but are not limited to, the following:

- a. The level of noise;
- b. Whether the nature of the noise is usual or unusual;
- c. Whether the origin of the noise is natural or unnatural;
- d. The level of the background noise;
- e. The proximity of the noise to sleeping facilities;
- f. The nature and zoning of the areas within which the noise emanates;

- g. The density of the inhabitation of the area within which the noise emanates;
- h. The time of day or night the noise occurs;
- i. The duration of the noise;
- j. Whether the noise is recurrent, intermittent or constant; and
- k. Whether the noise is produced by a commercial or noncommercial activity.

B. A violation of this section is an infraction and a public nuisance.

C. A violation of this section may result in the following:

- 1. issuance of an infraction citation;**
- 2. issuance of a notice of public nuisance;**
- 3. imposition of criminal and civil penalties; and**
- 4. confiscation and impoundment as evidence, of the components that are amplifying or transmitting the prohibited noise.**

D. An Enforcement Officer who encounters a violation of this section may issue a written notice to the Responsible Person demanding immediate abatement of the violation (Written Notice). The Written Notice shall inform the recipient that a second violation of the same provision within a seventy two (72) hour period may result in the issuance of a criminal citation and/or notice of public nuisance, the imposition of criminal and civil penalties, and confiscation and impoundment as evidence, of the components that are amplifying or transmitting the prohibited noise.¹

E. Any peace officer who encounters a second violation of this section within a seventy two (72) hour period following issuance of a Written Notice is empowered to confiscate and impound as evidence, any or all of the components amplifying or transmitting the sound.

F. Any person claiming legal ownership of the items confiscated and impounded under this section may request the return of the item by filing a written request with the Police Department within seven (7) calendar days

¹ Paragraphs D, E and F were formerly located in the Enforcement section at 11.96.090 which has been deleted.

of the confiscation. Such requests shall be processed in accordance with the procedures adopted by the Department.

11.96.040 EXCESSIVE NOISE AND VIBRATION EMANATING FROM A MOTOR VEHICLE.

A. No person shall operating or occupy a motor vehicle on any public right-of-way, public place or private property, while operating or permitting the use or operation of any radio, stereo receiver, musical instrument, television, computer, compact disc player, tape recorder, cassette player or any other device for the production or reproduction of sound from within the motor vehicle so that the sound is plainly audible at a distance of fifty feet from such vehicle, or in the case of a motor vehicle on private property, beyond the property line.

B. Pursuant to section 11.96.130, a violation of this section is a misdemeanor offense ***and a public nuisance.***

C. A violation of this section may result in the following:

1. issuance of a misdemeanor citation;
2. ***issuance of a notice of public nuisance;***
3. imposition of criminal and civil penalties; and
4. ***immediate*** confiscation and impoundment as evidence, of the components that are amplifying or transmitting the prohibited noise or the ***immediate*** confiscation and impoundment of the motor vehicle to which the component is attached if the same may not be removed without causing harm to the vehicle or the component.

D. Any person claiming legal ownership of a motor vehicle confiscated and impounded under this Section may request the return of the vehicle by filing a written request with the Police Department ***within seven (7) calendar days of the confiscation.*** Such requests shall be processed in accordance with the procedures adopted by the Department.

E. Any person claiming legal ownership of the items confiscated and impounded under this section, other than a motor vehicle, may request the return of the item by filing a written request ~~for an administrative hearing by the Administrative Appeals Officer no later than fourteen days after the item has been confiscated and impounded. All such requests shall be processed as an administrative appeal pursuant to Title 13 of this Code~~ ***with the Police Department within***

___days of the confiscation. Such requests shall be processed in accordance with the procedures adopted by the Department.

11.96.050 CONTROLLED HOURS OF OPERATION.

It shall be unlawful for any person to engage in the following activities other than between the hours of 8:00 a.m. and 8:00 p.m. in residential zones and other than between the hours of 7:00 a.m. to 8:00 p.m. in all other zones:

- A. Operate or permit the use of powered model vehicles and planes.
- B. Load or unload any vehicle, or operate or permit the use of dollies, carts, forklifts, or other wheeled equipment that causes any impulsive sound, raucous or unnecessary noise within one thousand feet of a residence.
- C. Operate or permit the use of domestic power tools, or machinery or any other equipment or tool in any garage, workshop, house or any other structure.
- D. Operate or permit the use of gasoline or electric powered leaf blowers, such as commonly used by gardeners and other persons for cleaning lawns, yards, driveways, gutters and other property.
- E. Operate or permit the use of privately operated street/parking lot sweepers or vacuums, except that emergency work and/or work necessitated by unusual conditions may be performed with the written consent of the City Manager.
- F. Operate or permit the use of pile driver, steam or gasoline shovel, pneumatic hammer, steam or electric hoist or other similar devices.
- G. Operate or permit the use of electrically operated compressor, fan, and other similar devices.
- H. Perform ground maintenance on golf course grounds and tennis courts contiguous to golf courses that creates a noise disturbance across a residential or commercial property line.
- I. Operate or permit the use of any motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds, or of any auxiliary equipment attached to such a vehicle, including but not limited to refrigerated truck compressors, for a period longer than fifteen minutes in any hour while the vehicle is stationary and on a public right-of-way or public space except when movement of said vehicle is restricted by other traffic.
- J. Repair, rebuild, reconstruct or dismantle any motor vehicle or other mechanical equipment or devices in a manner so as to be plainly audible across property lines.

11.96.060 EXEMPTIONS.

The following activities and noise sources shall be exempt from the provisions of this chapter:

- A. Those noise events in the community (e.g. airport noise, arterial traffic noise, railroad noise) that are more accurately measured by application of the general plan noise element policy, utilizing the community noise equivalent level (CNEL) method.
- B. Activities conducted on the grounds of any public or private school during regular hours of operation.
- C. Outdoor gatherings, public dances, shows and sporting and entertainment events provided said events are authorized by the City.
- D. Activities conducted at public spaces during regular hours of operation.
- E. Any mechanical device, apparatus or equipment used, related to or connected with emergency machinery, vehicle or work.
- F. All mechanical devices, apparatus or equipment which are utilized for the protection or salvage of agricultural crops during periods of potential or actual frost damage or other adverse weather conditions.
- G. Mobile noise sounds associated with agricultural operations provided such operations do not take place between the hours of eight p.m. and seven a.m. on weekdays, including Saturdays, or at any time on Sunday or a state holiday.
- H. Mobile noise sources associated with agricultural pest control through pesticide application.
- I. Warning devices necessary for the protection of the public safety, including, but not limited to, police, fire and ambulance sirens and train horns and sounds for the purpose of alerting persons to the existence of an emergency.
- J. Construction, repair or excavation necessary for the immediate preservation of life or property.
- K. Construction, operation, maintenance and repairs of equipment, apparatus or facilities of park and recreation departments, public work projects or essential public services and facilities, including trash collection and those of public utilities subject to the regulatory jurisdiction of the California Public Utilities Commission.

L. Construction, repair or excavation work performed pursuant to a valid written agreement with the City or any of its political subdivisions which agreement provides for noise mitigation measures.

M. Any activity to the extent regulation thereof has been preempted by State or Federal law; and

N. Any activity or noise source governed elsewhere in this Code. Such activities include but are not limited to:

1. Security alarm systems (see Chapter 8.28 of this Code)
2. Animal noise (see Title 10 of this Code)
3. Sound trucks and advertising by sound (see Chapter 5.68 of this Code)
4. Performance standards for Class A and B business and industrial uses (See Chapter 9.86 of this Code).
5. Noise making devices utilized by food vendors (See Section 12.28.100 of this Code)
6. Noise requirements for peddlers (See Section 5.48.110 of this Code)

O. Sounds generated in commercial and industrial zones that are necessary and incidental to the uses permitted therein.

P. Sounds generated from or incidental to emergency repairs to any public works function.

Q. Sounds generated in connection with speech or communication protected by the U.S. Constitution or the California Constitution, except to the extent such sounds are subject to permissible time, manner and place restrictions.

11.96.070 DISTURBANCES FROM CONSTRUCTION ACTIVITY.

A. No person shall be engaged or employed, or cause any other person to be engaged or employed, in any work of construction, erection, alteration, repair, addition, movement, demolition, or improvement to any building or structure except within the hours provided for by subsection B of this section.

B. The permitted hours for such construction work are as follows:

1. October 1st through April 30th.

Monday-Friday:	7:00 a.m. to 5:30 p.m.
Saturday:	8:00 a.m. to 5:00 p.m.
Sunday:	No Permissible Hours
State Holidays:	No Permissible Hours

2. May 1st through September 30th:

Monday-Friday:	6:00 a.m. to 7:00 p.m.
Saturday:	8:00 a.m. to 5:00 p.m.
Sunday:	No Permissible Hours
State Holidays:	No Permissible Hours

C. For purposes of this section, the following definitions shall apply:

"Building" means any structure used or intended for supporting or sheltering any use or occupancy.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

D. For purposes of this section, the following exceptions shall apply:

1. Emergency repair of existing installations, equipment, or appliances; and
2. Such work that complies with the terms and conditions of a written early work permit issued by the city manager or his or her designee upon a showing of a sufficient need and justification for said permit due to hot or inclement weather, the use of an unusually long process material, or other circumstances of an unusual and compelling nature.

11.96.080 ADMINISTRATION.

Except as otherwise provided, the provisions and prohibitions of this chapter shall be jointly administered by and the responsibility of the City's Police and Code Enforcement Departments.

~~11.96.090 ENFORCEMENT.~~

~~A. Except as provided in 11.96.40, an Enforcement Officer who encounters a violation of the restrictions or prohibitions in this chapter may issue a written notice to the Responsible Person demanding immediate abatement of the violation (Written Notice). The Written Notice shall inform the recipient that a~~

~~second violation of the same provision within a ____ hour period may result in the issuance of a criminal citation, the imposition of criminal and civil penalties and may result in the confiscation and impoundment as evidence, of the components that are amplifying or transmitting the prohibited noise.~~

- ~~B. Any peace officer who encounters a second violation of the restrictions or prohibitions in this chapter within a ____ hour period following issuance of the Written Notice is empowered to confiscate and impound as evidence, any or all of the components amplifying or transmitting the sound.~~
- ~~C. Any peace officer who encounters a second violation of this chapter within a ____ hour period whereby the component(s) amplifying or transmitting the sound are attached to a vehicle may, in accordance with the provisions of California Vehicle Code section 22655.5, impound the vehicle as evidence of a criminal offense, when the component(s) cannot be readily removed from the vehicle without causing damage to the component(s) or the vehicle.~~
- ~~D. Any person claiming legal ownership of the items confiscated and impounded under this section other than a motor vehicle, may request the return of the item by filing a written request for an administrative hearing by the Administrative Appeals Officer no later than fourteen days after the item has been confiscated and impounded. All such requests shall be process as an administrative appeal pursuant to Title 13 of this Code.~~

11.96.090 COST RECOVERY FOR SECOND RESPONSE.

- A. Whenever any Enforcement Officer issues a Written Warning to a Responsible Person to discontinue a noise violation, the Responsible Person shall be liable for the actual cost of each subsequent response required to abate the violation within seventy two (72) hours of the issuance of the Written Warning (Response Charge).
- B. The bill for the Response Charge shall be served upon the Responsible Person within thirty days after the violation. If the Responsible Person has no last known business or residence address, the location of the violation shall be deemed to be the proper address for service. The bill shall include a notice of the right of the person being charged to request a hearing before the Administrative Appeals Officer to dispute the imposition of the Response Charge or the amount of the Charge.
- C. The Response Charge shall be deemed to be a civil debt to the City.
- D. All Responsible Persons shall be jointly and severally liable for the Response Charge regardless of whether or not they received a Written Notice.

11.96.100 PUBLIC NUISANCE.

A violation of this chapter by any person responsible for committing, causing or maintaining such violation shall constitute a public nuisance which shall be subject to the provisions of Chapters 13.80 and 13.90.

11.96.110 INFRACTION VIOLATION.

~~Except as otherwise provided in 11.96.40,~~ A violation of **sections 11.96.030, 11.96.050 or 11.96.070** of this chapter by any person responsible for committing, causing or maintaining such violation shall constitute an infraction violation and the violator shall be subject to the provisions set forth in Chapter 13.65, including but not limited to the imposition of any and all criminal penalties set forth therein.

11.96.120 MISDEMEANOR VIOLATION.

A violation of section 11.96.040 of this chapter by any person responsible for committing, causing or maintaining such violation shall constitute a misdemeanor violation which shall be subject to the provisions set forth in Chapter 13.70, including but not limited to the imposition of any and all criminal penalties set forth therein.

11.96.130 CIVIL FINES.

Any person convicted of an infraction or misdemeanor violation under this chapter shall, for each separate violation, be subject to: (a) a fine in an amount not to exceed two hundred fifty dollars for a first conviction of an offense; (b) a fine in an amount not to exceed five hundred dollars for a second conviction of the same offense within a twelve-month period from the date of the first offense; and (c) a fine in an amount not to exceed seven hundred fifty dollars for the third conviction of the same offense within a twelve-month period from the date of the first offense. The fine for a fourth and any subsequent convictions of the same offense within a twelve-month period from the date of the first offense shall be one thousand dollars.

11.96.140 MODIFICATION, SUSPENSION AND/OR REVOCATION OF VALIDLY ISSUED CITY PERMIT AND/OR CITY LICENSE.

A violation of this chapter by the holder of any city permit and/or city license validly issued pursuant to this or any other chapter shall constitute grounds for modification, suspension and/or revocation of said permit and/or license pursuant to the provisions set forth in Chapter 13.150.

11.96.150 ADDITIONAL PENALTIES.

Nothing in this chapter shall preclude the city from pursuing the remedies provided by

chapter 13.140 including, but not limited to, as applicable, denial or revocation of certificates of occupancy, issuance of stop work orders and injunctive relief.

Section 3. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 4. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Cathedral City Municipal Code as heretofore adopted that are in conflict with the provisions of this ordinance are hereby repealed.

Section 5. EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after its second reading by the City Council.

Section 6. POSTING

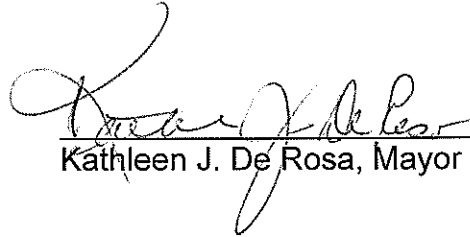
The City Clerk shall within 15 days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

[THIS SECTION INTENTIONALLY BLANK]

Section 7. CERTIFICATION

The foregoing Ordinance was approved and adopted at a meeting of the City Council held on January 10th, 2007 by the following vote:



Ayes: 5
Noes: 0
Abstain: 0
Absent: 0


Kathleen J. De Rosa, Mayor

ATTEST:


Pat Hammers, City Clerk

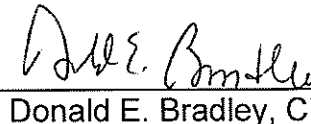
APPROVED AS TO CONTENT:


Police Department

Code Enforcement Department

APPROVED AS TO FORM:


Charles R. Green, City Attorney

Reviewed by:


Donald E. Bradley, City Manager